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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/712,615	11/13/2000	Kenneth F. Buechler	230/006	4653
30542	7590	10/19/2005	EXAMINER	
FOLEY & LARDNER P.O. BOX 80278 SAN DIEGO, CA 92138-0278			ART UNIT	PAPER NUMBER

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliant Appeal Brief
(37 CFR 41.37)**

Application No.

09/712,615

Applicant(s)

BUECHLER ET AL.

Examiner

Lisa V. Cook

Art Unit

1641


--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--


The Appeal Brief filed on 04 August 2005 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer.
EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.

1. ☐ The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3. ☐ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4. ☒ (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5. ☐ The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6. ☐ The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8. ☐ The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9. ☐ The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10. ☐ Other (including any explanation in support of the above items):

See attached.


10/14/05


LONG V. LE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600

10/17/05

NON-COMPLIANT APPEAL BRIEF

Claim Status

1. Applicants have requested clarification with respect to the status of claims 113-128 because the "Office Action Summary" from May 5, 2005 indicates that these claims are "withdrawn" while the body of the action examines said claims on the merits. Examiner Apologizes for the typo appearing on the "Office Action Summary". All the pending claims were considered (claims 27, 28 and 93-128). No claims are withdrawn as indicated in the body of the office action.

Appeal Brief

2. Applicant's Appeal Brief filed 04 August 2005 is non-compliant for the following reasons (also see PTOL-462):

A. The brief does not contain a statement of the status of all claims (37 CFR 41.37(c)(1)(iii)). The brief does not include canceled claims 1-26. The brief does not list claims 27, 28 and 93-128 as the subject of appeal. Please include both statements.

B. The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal (37 CFR 41.37(c)(1)(v)). The brief does not address independent claim 28 drawn to a kit comprising the device. Further, referring to the specification by page and line number and to the drawings.

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C. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)). The appendix listed withdrawn claims, however no claims are withdrawn.

3. Papers related to this application may be submitted to Group 1600 by facsimile transmission. Papers should be faxed to Group 1600 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Group 1641 – Central Fax number is (571) 273-8300, which is able to receive transmissions 24 hours/day, 7 days/week. In the event Applicant would like to fax an unofficial communication, the Examiner should be contacted for the appropriate Right Fax number.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lisa V. Cook whose telephone number is (571) 272-0816. The examiner can normally be reached on Monday - Friday from 7:00 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Long Le, can be reached on (571) 272-0823.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group 1600 whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

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Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lisa V. Cook

Remsen 3C-59

571-272-0816

10/14/05